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which one who brings an issue to the court assumes, to establish his contention by the appropriate weight of evidence. And yet the cases are full of illustrations of its use to indicate that condition where one party or the other, at a particular stage of the trial, is called upon to produce evidence at the risk of being defeated. The last, a "burden" which shifts back and forth during the progress of the introduction of evidence, and the first a "burden" which never shifts. And this distinction is fundamental, and failure to regard it is certain to confound.

The American notes, while not exhaustive, serve well to illustrate the various propositions of the text and to indicate differences between the English and American view wherever such distinctions are found.

To the serious student of the law of evidence the book is invaluable. Much has been written upon this branch of the law in these modern days which is really illuminating and which tends toward eliminating much of that which is unscientific, and it is to be hoped that the editions of this book, under as able editorship, will not cease to appear periodically until "Words and phrases now used in confused and interblended meanings shall be employed in a single sense"; until "the rules of evidence now constantly mingled with, or mistaken for, those of substantive law, or other branches of procedure, are relegated to their proper sphere," and until "the conception that a litigant has a vested right in the application of a rule of evidence to the facts of his case as a matter of law;—in other words, that the doctrine of *stare decisis* extends to the application of a principle of administration—shall be abandoned."

V. H. L.

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IDEALS OF THE REPUBLIC. By James Schouler, LL.D., Boston: Little, Brown & Co., 1908, pp. xi, 304. Price \$1.50 net.

Dr. Schouler is well qualified by experience and training to "trace out" as he does in these chapters, "those fundamental ideas, social and political, to which America owes peculiarly her progress and prosperity, and to consider the application of those ideas to present conditions." The volume seems to be the work of one who has lived much in the simple past and cherishes it, and who yet appreciates the good things of the more complex present while recognizing certain dangerous modern tendencies. Throughout the book the suggestion is made—generally with a dignified mildness—that, in dealing with the problems of today, we need to recur frequently to the fundamental principles which guided the conduct of our fathers. Many readers will doubtless conclude that the author is too old-fashioned, and will not agree with him that the ideas of the old times have any application to present political and social conditions.

Such a variety of subjects is treated that full discussion of few is attempted, but the author states briefly the chief reasons for his conclusions. He would apply the old and simple principles whether in deciding what are "excessive fines" (and while admitting that "excessive" is a relative term, he thinks that a fine of twenty-nine millions is excessive—p. 63), or in considering what shall be done to curb the recklessness of many drivers of automobiles: "This

costly toy, which only the few can afford to keep and own, is the symbol and epitome of obtrusive arrogance towards the multitude, offset only by the danger it brings to those themselves who use it." (p. 277).

He thinks there may be too much brandishing of the "rod of discipline": "Nor is it needful in the public interest that our chosen executive should, with his many important functions to perform, be always intent or keep the people intent, upon pursuing and punishing. Administration is not a steeple-chase, for a constant tally-ho, in running foxes to cover." (p. 284). He commends in general the initiative and referendum (p. 84), though he believes they may more admirably apply to constitutional changes than to ordinary legislation as to which "voters are not so readily informed, so interested or so capable of discriminating among the mass of proposed measures, as honest and intelligent representatives such as any constituency may have put forward on its behalf" (p. 197). There are brief but suggestive discussions of most of the questions now attracting attention: the advantages and disadvantages of the corporation; government ownership or government regulation of public utilities; public servants and civil service methods; rigidity or elasticity in the construction of constitutions, &c., &c.

The work is valuable in that it states in attractive form the conclusions of a thoughtful and mature student of our history on questions of interest to every intelligent American.

J. H. B.

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#### CORRESPONDENCE.

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EDITOR MICHIGAN LAW REVIEW,  
ANN ARBOR, MICHIGAN.

*Dear Sir:*—Before sending you "Martin's Mining Law and Land Office Procedure" for review, I wrote you fully regarding the hesitancy of my house to send out books for review in the law magazines, and that this work was being sent to you only at my earnest solicitation.. The book was sent out generally, and the reviews are satisfactory, and have been beneficial, with the exception of the one in the MICHIGAN LAW REVIEW, which was not a review at all, but a "roast" by a writer who is evidently a novice at such work, and produced an article,—through lack of a sufficient and well-grounded knowledge of the subject treated in Mr. Martin's book,—untrue and vicious, if not purposely malignant.

We do not hold you personally responsible for the shortcomings of the

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\*NOTE—This letter is published at the special request of its writer, Mr. James M. Kerr, and refers to a review of the work mentioned that appeared in our issue for November, 1908.

The MICHIGAN LAW REVIEW has made an especial effort to have all reviews appearing in its Book Review department prepared by competent and impartial reviewers. We leave it to the profession to say whether Mr. Martin, the author, Mr. Kerr, the Editor-in-Chief of the publishers, or Mr. Clayberg, the reviewer, is correct.—ED. M. L. R.